

### REMARKS

Claims 1-6, 8-25 and 27-36 remain in this application, and are not amended by this response. Issues identified in the last Office Action are addressed under the headings below.

#### **1. Rejections Under 35 U.S.C. § 102(b) Are Traversed**

##### Claims 1 & 21

Claims 1-6, 16-18, 21-25, 31-33, 35 and 36 were rejected under 35 U.S.C. § 102(b) in view of Herz. These rejections are respectfully traversed.

Herz fails to disclose a system or method configured for:

- retrieving said original message data and said response message data from said plurality of remote information systems;

- storing said original message data and said response message data;

- configuring said original message data and said response message data from different ones of said plurality of remote information systems to be arranged together as aggregated message and response data relating to a topic; and

- providing said aggregated message and response data to a plurality of reception devices

as defined by claims 1 and 21.

With respect to claim 21, Herz fails to disclose or suggest a step of "configuring said original message data and said response message data from different ones of said plurality of remote information systems to be arranged together as aggregated message and response data relating to a defined topic" or a step of "providing said aggregated message and response data to a plurality of reception devices." The argument in the Office Action mailed 9/21/06 that these elements are inherent in Herz was traversed in Applicant's last response and has been withdrawn. With respect to claim 1, Herz fails to disclose or suggest any application adapted to perform these steps. In the last Office Action, it was argued that Herz discloses these elements at col. 7:29-33 and col. 56:43.

However, this argument is not persuasive.

At col. 7:29-33, Herz discloses, in connection with browsing, that "articles are organized so that users can actively navigate among groups of articles by moving from one group to a larger, more general group, or to a closely related group." This does not disclose the elements at issue, because Herz fails to disclose that the original message and response data be "from different ones of said plurality of remote information systems" and be "arranged together as aggregated message and response data relating to a defined topic." "Articles" as disclosed by Herz does not read on "original message data and response message data" as defined by claims 1 and 21, because "article" according to its plain meaning means an independent piece of non-fiction prose. Nor does Herz define "article" in any way contrary to its plain meaning. It is unreasonable to construe "article" so broadly so as to include both "original message data and response message data" as these claims define. Therefore, Herz fails to disclose the elements at issue at col. 7:29-33.

Likewise, Herz fails to disclose these elements at col. 56:43. Herz there discloses that, referring to a method diagrammed in Fig. 5, that this method, besides being useful for "selecting which articles to read from electronic news groups and electronic bulletin boards," "can be used as part of a system for screening or organizing electronic mail." Col. 56:39-43. Here, Herz merely discloses that electronic mail messages may be profiled in the same manner as articles from news groups and bulletin boards. *Id.* Herz discloses presenting articles to users in a list "sorted according to the degree of similarity of the article's target profile to the most similar search profile in the user's search profile set." Col. 58:28-31. Herz, therefore, discloses preparing lists based on similarities between a user search profile and a target profile, and fails to disclose or suggest configuring message and response data to "be arranged together as aggregated message and response data relating to a topic," as defined by claims 1 and 21. It is plain from Herz that a "profile" is distinct from a "topic": Herz defines a profile as a "collection of attributes." Col. 4:57-60. Under no sense of the

word does a profile encompass a topic, which means the subject of a conversation or discussion. Herz therefore fails to disclose aggregating message and response data "relating to a topic."

Claims 4 & 23

Further with respect to claims 4 and 23, Herz fails to disclose or suggest "receiving additional response message data and additional original message data directly from said reception devices, and aggregating the additional data with the original and response message data," as defined by these claims. Herz merely discloses collecting information likely to be of interest to a particular user. Col. 55:38-55-49. In contrast, these claims define receiving message and response data directly from the reception devices, and aggregating it with original and response message data from a remote information system. To demonstrate anticipation, the Office Action generally recited the portions of Herz applied against different elements of claims 1 and 21, and nothing more. The Applicant has reviewed those portions of Herz, as well as the entirety of Herz, and has not found any disclosure of the recited subject matter. In ¶ 11 of the Office Action, anticipation is based primarily on Herz at col. 7:24-32, which reads:

The system for customized electronic identification of desirable objects described herein can of course function as a browser for bulletin boards, where target objects are taken to be bulletin boards, or subtopics of bulletin boards, and each target profile is the cluster profile for a cluster of documents posted on some bulletin board. Thus, a user can locate bulletin boards of interest by all the navigational techniques described above, including browsing and querying.

Again, this boils down to collecting information likely to be of interest to a particular user, and Herz fails to disclose or suggest the recited functions.

Contrary to ¶ 11 of the Office Action, the above arguments and complementary arguments set forth in Applicant's last response clearly do not rest on a premise that Herz fails to disclose "operating a bulletin board." More to the point, the argument in ¶ 11 that a "reception device . . . could readily be operating a bulletin board" is based on

an unreasonable interpretation of the claims. Apparently, to make a case of anticipation based on Herz, the claimed "reception devices" and "remote information systems" are being equated to be one and the same devices; i.e., a device operating a bulletin board. This is not even logical, let alone reasonable. Both the specification (see Figs. 1-4, 6 and accompanying description) and the claims make it clear that these must be separate groups of devices. "Remote information system" reads on a server operating a bulletin board, and "reception device" on a separate client device that receives aggregated data. For example, claims 1 and 21 recite "retrieving . . . data from a plurality of remote information systems" and also "providing . . . aggregated . . . data to a plurality of reception devices." The use of different labels to describe the same device within the same claim would surely be unreasonable. Conversely, if different labels for different devices may simply be disregarded, it becomes nearly impossible draft a definite claim involving different computing devices. Therefore, whether or not a "reception device" may reasonably be equated to a server operating a bulletin board, it is certainly unreasonable to so construe it in a claim that uses "remote information system" as encompassing a computer bulletin board.

Moreover, such an interpretation would differ from what was argued against with respect to the base claims. It should not be permissible to construe the same terms as appear in the base claims differently when they appear in dependent claims. Not only would this be unreasonable; it would also undermine the arguments made against the base claims. If these different terms are taken to refer to one and the same devices, Herz fails to disclose providing message data "to at least one of said plurality of remote information systems," from which original and response message data has been received, as required by base claims 1 and 21.

Therefore, the Office Action application of Herz to claims 4 and 23 is based on an unreasonable construction of the claim language as defined by base claims 1 and 21. In the alternative, if the construction is adopted, Herz fails to disclose all of the features recited by the respective base claims 1 and 21, as noted above. Accordingly,

the required showing for anticipation has not been made out.

Claims 5, 6, 24 and 25

Furthermore, Herz fails to disclose or suggest providing any data “to at least one of said plurality of remote information systems” as all of claims 5, 6, 24 and 25 require, in some fashion. Herz merely discloses collecting information, not dispensing information to the sources from which it is gathered – here, the “said plurality of remote information systems.” Id. Again, the Office Action does not point out where Herz discloses the elements of these claims, and so has not made the required showing for anticipation.

In ¶ 12 of the Office Action, it is argued that a “PC operating a bulleting board could be both an RIS [remote information system] and a reception device, and would read on the claim.” As noted above, it is unreasonable to construe the different labels “RIS” and “reception device” as defining the same device within the context of a claim. Therefore, that a PC “could be” both an RIS and a reception device, even if true, is not relevant to anticipation under § 102. For one thing, it is unreasonable to disregard the use of different and distinct labels for devices in the claim. But even if this is accepted for the sake of argument, the case of anticipation must still fail. As defined by claims 4-6, 23-25 and their respective base claims, the recited plurality of RIS’s must be sources from whence message data is retrieved. That is, claims 1 and 21 define “retrieving said original message data and said response message data from said plurality of remote information systems.” The fact remains that Herz fails to disclose providing message data “to at least one of said plurality of remote information systems,” from which original and response message data has been received, nor has any showing of inherency been made. Herz therefore does not anticipate these claims.

Failing to disclose all of the claimed elements of the claims discussed above, Herz cannot anticipate these claims, which are therefore allowable. The remaining rejected claims are also allowable, at least as depending from allowable base claims.

### **3. Rejections Under 35 U.S.C. § 103(a) Are Traversed**

Claims 8-15, 19-20, 27-30 and 34 were rejected under 35 U.S.C. 103(a) and obvious over Herz and official notice. These rejections are respectfully traversed. All of these claims except for 19 and 34 generally define providing advertising in messages provided to "said plurality of remote information systems," which are as defined by claims 1 and 21 the other participating message systems from which message data is gathered. Claims 19 and 34 define selecting one of "said plurality of remote information systems" via nomination. The Office Action bases its *prima facie* argument against these claims on an assertion of that advertising and nominating were well known in the art, based on official notice. Even if true, this is not a sufficient basis for demonstrating obviousness, because all of these claims recite detailed features that have not been disclosed in the prior art. The Office Action lacks any showing of all features recited by these claims. Therefore, no case of *prima facie* obviousness has been properly laid out against these claims, which are therefore allowable.

Applicant respectfully submits that the elements defined by 8-15, 19, 20, 27-30 and 34 were not common practices or otherwise known at the time the invention was made. As Applicant has requested in all prior responses, a specific reference or references should be therefore be provided showing all the claimed elements, as required.

With respect to claims 8 and 27, therefore, Applicant has requested and continues to request a reference that particularly shows "providing advertisement data to said plurality of remote information systems such that a requesting reception device receives said advertisement data along with said additional response message data," as defined by these claims. That advertising was known in the art is of no significance, because no showing has been made of any prior art reference disclosing these additional elements of claim 27. A reference showing these recited features is respectfully requested.

With respect to claims 9 and 28, therefore, Applicant has requested and

continues to request a reference that particularly shows, in addition to what is claimed in claims 8 and 27, "advertisement data further includes hyper-link data adapted to provide an interacting one of said plurality of reception devices with additional advertisement data." No such reference has been provided, nor does the general statement that advertising was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claims 10 and 29 therefore, Applicant has requested and continues to request a reference that particularly shows "add[ing] advertisement data to said additional original message data before said additional original message data is provided to said plurality of remote information systems." No such reference has been provided, nor does the general statement that advertising was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claims 11 and 30 therefore, Applicant has requested and continues to request a reference that particularly shows in addition to what is claimed in claims 10 and 29 that "advertisement data further includes hyper-link data adapted to provide interacting ones of said plurality of reception devices with additional advertisement data." No such reference has been provided, nor does the general statement that advertising was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claim 12 therefore, Applicant has requested and continues to request a reference that particularly shows "add[ing] advertisement data to said original message data and said response message data before said original message data and said response message data are provided to said plurality of remote information systems." No such reference has been provided, nor does the general statement that advertising was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claim 13 therefore, Applicant has requested and continues to

request a reference that particularly shows, in addition to what is claimed in claim 12, "advertisement data further includes hyper-link data adapted to provide interacting ones of said plurality of reception devices with additional advertisement data." No such reference has been provided, nor does the general statement that advertising was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claim 14 therefore, Applicant has requested and continues to request a reference that particularly shows, "add[ing] advertisement data to said original message data; and provid[ing] said original message data together with said advertisement data to said plurality of remote information systems." No such reference has been provided, nor does the general statement that advertising was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claim 15 therefore, Applicant has requested and continues to request a reference that particularly shows, "add[ing] advertisement data to said response message data; and provid[ing] said response message data together with said advertisement data to said plurality of remote information systems." No such reference has been provided, nor does the general statement that advertising was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claim 19 therefore, Applicant has requested and continues to request a reference that particularly shows, "the plurality of remote information systems are further selected by at least one of said plurality of reception devices nominating at least one of said plurality of remote information systems." No such reference has been provided, nor does the general statement that nominating was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claim 20 therefore, Applicant has requested and continues to



request a reference that particularly shows, "the plurality of remote information systems are further selected by at least one of said plurality of reception devices voting for at least one of said plurality of remote information systems." No such reference has been provided, nor does the general statement that nominating was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

With respect to claim 34 therefore, Applicant has requested and continues to request a reference that particularly shows, "wherein said step of identifying said plurality of remote information systems further includes receiving nomination data from at least one of said reception devices." No such reference has been provided, nor does the general statement that nominating was well known in the art show that the recited features were known. A reference showing these recited features is respectfully requested.

No *prima facie* case concerning the additional elements of these claims has been established. These claims are therefore allowable, and the rejections should be withdrawn.

### **3. Official Notice Was Timely and Properly Traversed**

The statements in ¶ 13 of the Office Action that "this attempt to traverse after final is not seasonable" and do not point out "why the noticed fact is not considered to be well known in the art" are not correct, and conflate a position that was properly traversed with one that was not traversed.

First of all, the traversal to the rejections under § 103 based on official notice were made in Applicant's first response (dated June 30, 2006) to the first Office Action mailed January 31, 2006. In that response, Applicant stated that:

Claims 8-15, 19, 20, 27-30 and 34 have been rejected under 35 U.S.C. 103(a) and obvious over Herz and official notice. These rejections are respectfully traversed.

Applications respectfully submit that the elements defined by 8-15, 19, 20, 27-30 and 34 were not common practices or otherwise known at

the time the invention was made. A specific reference or references be [sic] therefore be provided, showing all the claimed elements. Further, it is respectfully submitted that the claimed combination of elements would not have been obvious in view of email advertising and nominating, even if these were common practices. The prior art fails to contemplate or suggest taking these actions in combination with an aggregating central resource that operates to intervene in a plurality of remote information resources, as these claims define. These rejections should therefore be withdrawn.

Response 6/30/2006, p. 12. Therefore, the traversal was seasonably made.

Second, it has also been Applicant's clear position from the first Response and in all subsequent responses that even if advertising and nominating were known in the art, there has been no showing of a reference that makes use of advertising or nominating in the specific ways set forth in claims 8-15, 19, 20, 27-30 and 34. From the very beginning, Applicant has requested that a reference be provided showing the particular features set forth in these claims. To date, no reference showing the features of these claims has been identified. Nor has Applicant's point that the mere prior existence of advertising and nominating is insufficient to demonstrate obviousness of these claims been argued or refuted. Therefore no proper *prima facie* case has been made against these claims.

#### **4. Finality Of The Office Action Is Premature**

As noted directly above, no proper *prima facie* case has been raised against claims 8-15, 19, 20, 27-30 and 34. It was therefore improper to make the last Office Action final, because Applicant's request for a reference showing the elements that are acknowledged as novel over Herz has been ignored. Applicant's argument that a mere showing of advertising and nominating as prior art concepts falls short of showing the recited features has not been addressed. M.P.E.P. § 706.07(b) cannot be held to apply where the clear deficiencies of a faulty *prima facie* case have been simply ignored. Applicant has to date received no meaningful response to the traversal of the rejections under § 103 set forth in Applicant's first response. It would be wasteful to the Applicant

& Examiner's time to rush immediately to appeal before there has been a meaningful dialogue on these questions.

In addition, the basis for the Examiner's rejection of claims 1-6, 16-18, 21-25, 31-33, 35 and 36 under 35 U.S.C. § 102(b) has changed. The argument in the Office Action mailed 9/21/06 that these elements are inherent in Herz was traversed in Applicant's last response and has been withdrawn. This response is therefore the first opportunity the Applicant has had to traverse the rejections under § 102(b) made on a basis that does not include inherency.

For either or both of the foregoing reasons, the holding of finality should be withdrawn. The arguments set forth in this response and prior responses should be addressed in full, and the Applicant should have an opportunity to respond to those arguments, before a final office action is issued.

\* \* \* \* \*

In view of the foregoing, the Applicants respectfully submit that claims 1-6, 8-25 and 27-36 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited.

To the extent it would be helpful to placing this application in condition for allowance, the Applicants encourage the Examiner to contact the undersigned counsel and conduct a telephonic interview.

While no fees are believed due in connection with the filing of this paper, the Commissioner is authorized to charge any fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-3683.

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Respectfully submitted,

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/Jonathan Jaech/  
Jonathan Jaech  
Attorney for Applicants  
Registration No. 41,091

CUSTOMER  
NUMBER

**58688**

PATENT TRADEMARK OFFICE

**Connolly Bove Lodge & Hutz LLP**  
P.O. Box 2207  
Wilmington, DE 19899  
(213) 787-2500